INTERNATIONAL CORPORATE SERVICES LIMITED

v.

HIU WOON KIAM

HIGH COURT MALAYA, KUALA LUMPUR
VC GEORGE J
[CIVIL SUIT NO. C 1063 OF 1985]
5 DECEMBER 1985

CIVIL PROCEDURE: *Striking out of statement of claim - Order 18 r. 19 of Rules of the High Court 1980 - No cause of action - Agents owners of the property - Amendment of statement of claim - Circumstances where possible.*

TRUSTS: *Trust property - Ownership - Possession - Trustee and beneficiary - Theft - Who has title - Who can sue.*

The plaintiffs are an organization which provide corporate and secretarial services to corporations. The plaintiffs, in the statement of claim, allege that on 26 November 1980, the defendant (who was employed by the plaintiffs as an accountant in Hong Leong), in the course of his duties as an employee of the plaintiffs, stole US$165,476.16 out of a specified amount of US$5,816,793. This amount was held in the name of Royce (one of the plaintiffs' clients). Royce had in fact instructed the plaintiffs to transfer these funds to another corporation called Chillewich Corporation in New York. The plaintiffs contend that the defendant fraudulently transferred US$165,476.16 to a Hong Kong firm called Chillewich Corporation EN of which the defendant was a sole proprietor. The plaintiffs contended that by the said theft the plaintiffs have suffered loss to the extent of the said amount that was stolen.

The defendant applied to have the statement of claim struck out under O. 18 r. 19 of Rules of the High Court 1980. The basis of the defendant's application was that the said US$165,476.16 belonged to Royce and that the plaintiffs were only agents of Royce and as such had no cause of action in their own right against the defendant even if there was the loss of the money. The defendant also contended that if at all there could be a claim for the amount, only Royce as owners of the money could bring the action.

Held:

[1] Summary procedure under O. 18 r. 19 can only be adopted if it can be clearly seen that the claim is on the face of it obviously unsustainable (see *A. G. of Duchy of Lancaster v. L. & N.W. Railway* [1892] 3 Ch 274). Even if a pleading is bad, it will not be struck down under this rule unless it is clear that no legitimate amendment can save it (see *Republic of Peru v. Peruvian Guano Co.* [1887] 36 Ch. D. 496).

[2] Reading the statement of claim and the affidavits filed on behalf of the plaintiffs, it is clear that in effect Royce had entrusted to the plaintiffs the said US$5,816,793 held in the Chartered Bank, Hong Kong. If part of that money was stolen particularly by an employee of the plaintiffs while the amount was entrusted to them, the plaintiffs are clearly liable to Royce for the amount stolen.

[3] A person in possession of goods has *prima facie* a title to them. As against strangers, a trustee and his beneficiary are regarded in equity as one person so that possession of trust property whether real or personal by the beneficiary is in general possession by the trustee.

[4] If the person in possession loses the goods he retains this title to them and may sue anyone who converts or detains them from him.

[5] A mere finder has been held to have such a property to be able to maintain and action for conversion against one who wrongfully deprives him of possession.

[6] It is clear therefore that a trustee in possession or in control of trust property is entitled to maintain an action against the one who has stolen the property.

[7] It is also clear that amendments to the statement of claim have to be made to make clear the cause of action that the plaintiffs have as against the defendant. The statement of claim here may be saved by such amendments.

[Application to strike out under O. 18 r. 19 dismissed with costs.]

Cases referred to:
A. G. of Duchy of Lancaster v. L. & N.W. Railway [1892] 3 Ch 274
Republic of Peru v. Peruvian Guano Co. [1887] 36 Ch D 3496

Legislation referred to:
Rules of the High Court 1980, O. 12 r. 7(2), O. 18 r. 19

Other source referred to:
Halbury's 4th Edn. para. 615, 1433, 1437

For the defendant/applicant - Chua Liang Hong; M/s. L.H. Chua
For the plaintiffs/respondents - William Leong Jee Keen; M/s. Joseph Tan & Tang

JUDGMENT

VC George J:
[On encl. (11)]

Although the application by the defendant to have the writ of summons and statement of claim set aside was stated to be pursuant to O. 12 r. 7(2), at the hearing of the summons, Counsel for the defendant requested me to treat the application as an O. 18 r. 19 application. There was no objection to this by Counsel for the plaintiffs and accordingly by consent the matter was heard as an O. 18 r. 19 application.

By the statement of claim the plaintiffs who provide corporate and secretarial services to corporations contend that one of their clients Royce International Corporation (Royce) had instructed them to make a series of transfers of funds belonging to Royce held in the Chartered Bank, Hong Kong to another corporation called Chillewich Corporation in New York. The total amount to be transferred was US$5,186,793.

The defendant was employed by the plaintiffs as an accountant in Hong Kong and among his duties was the preparation of the necessary requests to banks including the Chartered Bank, Hong Kong for transfer of funds. In effect the plaintiffs allege that on or about 26 November 1984 the defendant in the course of his duties as an employee of the plaintiffs stole US$165,476.16 out of the aforesaid amount held in the Chartered Bank, Hong Kong in the name of Royce by fraudulently causing the transfer of that amount to a Hong Kong firm called Chillewich Corporation EN of which the defendant was the sole proprietor. The plaintiffs contend that by the said theft the plaintiffs have suffered loss to the extent of the said amount that was stolen.

Counsel for the defendant rested his application to set aside the writ on the ground that the said US$165,476.16 belonged to Royce and that the plaintiffs were only agents of Royce and as such had no cause of action in their own right against the defendant even if there was the loss of the money. It was contended that if at all there could be a claim for the amount only Royce as owners of the money could bring the action.

It is trite that the summary procedure under r. 19 can only be adopted when it can be clearly seen that the claim is on the face of it obviously unsustainable. (*A.G. of Duchy of Lancaster v. L. & N.W. Railway* [1892] 3 Ch 274). Further it has also been held that even if a pleading is bad, it will not be struck down under this rule unless it is clear that no legitimate amendment can save it. (*Republic of Peru v. Peruvian Guano Co.* [1887] 36 Ch D 496).

Reading the statement of claim and the affidavits filed on behalf of the plaintiffs, it is clear that in effect Royce had entrusted to the plaintiffs the said US$5,816,793 held in the Chartered Bank, Hong Kong. If part of that money was stolen, particularly by an employee of the plaintiffs while the amount was entrusted to them, the plaintiffs are clearly liable to Royce for the amount stolen.

A person in possession of goods has *prima facie* a title to them. As against strangers, a trustee and his beneficiary are regarded in equity as one person so that possession of trust property whether real or personal by the beneficiary is in general possession by the trustee. *Halsbury* 4th Edn., Vol. 48, para. 615. If the person in possession loses the goods he retains his title to them and may sue any who converts or detains them from him. *Halsbury* 4th Edn., Vol. 45, para. 1437. In addition to a bailee a mere finder has been held to have such a property to be able to maintain an action for conversion against one who wrongfully deprives him of possession. *Halsbury* 4th Edn., para. 1433. Extending the principles on which those propositions are founded it seems clear that a trustee in possession or in control of trust property is entitled to maintain an action against the one who has stolen the property.

There can be no doubt that amendments to the statement of claim have to be made to make clear the cause of action that the plaintiffs have as against the defendant. In my judgment the statement of claim may be saved by such amendments and accordingly the application to strike out under O. 18 r. 19 has to be and is dismissed with costs.

Also found at [1986] 1 CLJ 423